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VIA FEDERAL EXPRESS

March 15, 1996

Hon. William F. Caton
Acting Secretary
Office of the Secretary
Federal Communications Commission
1919 M. Street, N.W.
Washington, DC 20554

Re: In the Matter of
Telecommunications Inside Wiring

CS Docket No. 95-184

Dear Mr. Caton:

Enclosed please find an original and 4 copies of the comments of the Staff of the New Jersey Office of Cable Television and Division of Telecommunications for filing in the above matter.

Kindly place the Office of Cable and Division of Telecommunications on the service list for this docket.

Please return one copy marked "Filed" in the enclosed addressed, stamped envelope.

Thank you for your consideration.

Very truly yours,

James A. Nappi, Esq.
Secretary

/ac
enclosures

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, DC 20554

In the Matter of

Telecommunications Services

Inside Wiring

Customer Premises Equipment

CS Docket No. 95-184

Comments of the State of New Jersey
Board of Public Utilities
on Notice of Proposed Rulemaking

The State of New Jersey, Board of Public Utilities ("Board"), respectfully submits the following comments to the Notice of Proposed Rulemaking ("NPRM") released by the Federal Communications Commission (hereinafter "Commission") on January 26, 1996. The Board has regulatory authority over telephone utilities in the State of New Jersey pursuant to N.J.S.A. 48:2-13 et. seq., and authority over cable television operations pursuant to N.J.S.A. 48:5A-1 et seq. The Board is also the franchising authority for New Jersey cable television systems. Through its Office of Cable Television, the Board has extensive experience in the investigation and resolution of disputes between cable

operators and their subscribers including the disposition and ownership of the inside cable television wiring.

In these comments the Board, through the Office of Cable Television and Division of Telecommunications (hereinafter "staff") will address the issues in the NPRM, which it believes are pertinent to New Jersey consumers and best reflects the rapidly evolving telecommunications environment in the state.

DEMARCATION POINT

I. Single Dwelling Units

With respect to the Commission's request for comments on setting a common demarcation point for wireline communications networks, it is staff's belief that the point of demarcation for any wireline communications network should be based on the type wire being used (i.e., twisted pair, coaxial cable, etc.) regardless of the type of service being provided by the network. In terms of exiting telephone and cable television networks, staff does not believe that changing the existing demarcation points[1] for twisted pair and coaxial cable installation would be beneficial to

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[1]The Commission's rules currently set the demarcation point for cable at (or about) 12 inches outside of where the cable wire enters the subscriber's dwelling unit, and for telephone wiring in single unit installations at a point within 12 inches of the protector or in the absence of a protector within 12 inches of where the telephone wire enters the premises. Multiunit installations are afforded a greater degree of latitude in establishing the Rate Demarcation Point "RDP" depending upon the date the facility was constructed.

consumers or property owners at this time. As presently defined, the demarcation points for cable and telephone service both allow for easy access to the cable and telephone wiring in existing single family residences. In addition, the existing Cable Home Wiring rule (FCC Docket No. 29-260) allows the property owner to acquire the cable wiring from the cable operator (in instances where the property owner does not already own the wiring) before the point of entry into the home; thus allowing the incumbent cable operator to disconnect the cable wiring at the point of demarcation without causing inconvenience to the subscriber or physical disruption to the property.

Staff further notes that under the current rules, the existing demarcation points for traditional telephone and cable service may already be considered to be in a common area. The existing rules provide demarcation points which establish a location for connection/termination within a range from 12 inches inside to 12 inches outside of the wall of the premises, and in cases where cable and telephone installations enter the single dwelling premises on the same side, these locations could be considered common.

Alternatively, if the Commission determines that there is a need for a common demarcation point, staff recommends that the location be tailored to the competitive broadband needs of the future. Since the existing cable demarcation point was primarily designed with competition in mind, and coaxial cable is likely to be the wire of choice for delivery of broadband services, staff would recommend a common location for single dwellings which would mirror the current

cable demarcation point.

II. Multiple Dwelling Units (Non-loop-through wiring)

A. Cable Inside Wiring -

In terms of Multiple Dwelling Unit ("MDU") installations, staff shares the Commission's concern that the existing cable demarcation point for MDUs may impede competition in the multi-channel video delivery marketplace. The potential effects on competition may be particularly noticeable in New Jersey where the state-wide cable penetration rate is nearly 70% of the homes passed in the state, and MDU subscribers represent approximately 250,000 of the 2 million cable subscribers in the state. Based on past experience in settling disputes between cable operators, alternative multi-channel video providers and property owners concerning the ownership, disposition and use of MDU cable wiring, the record in New Jersey appears to indicate that the existing cable demarcation point does not provide fair and equal access for all service providers[2].

Staff believes that numerous factors must first be considered in order to establish a demarcation point for

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[2]For the purpose of this proceeding, the definition of service provider will mean all providers of telecommunications services including cable television operators.

cable inside wiring, which provides for fair and equitable competition for all future service providers. These factors include: building architecture, disposition/ownership of existing wiring, property rights of the MDU owner, and rights of the MDU tenant to choose an alternative service provider. While the Commission is requesting comments on both cable loop-through and non-loop-through wiring, staff will limit its comments to non-loop-through wiring only. In New Jersey, most cable operators have replaced the vast majority of antiquated loop-through wiring in the MDU environment.

B. Common Demarcation Point -

Staff believes that, as with single dwelling installations, in an MDU setting a common demarcation point for twisted pair telephone service and coaxial cable service is not practical in all circumstances, particularly in a high rise environment where cable and telephone wiring configurations are considerably different. As the Commission noted in its NPRM, in 1990 the telephone wiring demarcation point was revised to allow for the location to be flexible enough to accommodate wiring in existing buildings. This revision essentially recognized that telephone wiring configurations can vary considerably from building to building and there was a need to accommodate these variations. With respect to cable inside wiring, the configuration can also vary depending on the building type and architecture. In general, most telephone and cable wiring configurations, in terms of the location of the riser cables and distribution box or interface unit, are dictated by the type of wire used throughout the building. Because of

certain technical constraints associated with twisted pair telephone wiring, setting a common demarcation for twisted pair and coaxial cable would not be technically practicable.

As staff noted in its comments concerning single dwelling installations, the location of the demarcation point in an MDU setting for wireline telecommunications services should also be based on the type of wire being used (i.e., twisted pair, coaxial cable, etc.) regardless of the service being provided.

C. Cable Demarcation Point -

Currently, the cable demarcation point for MDUs is located at or about 12 inches outside the point where the cable wire enters the dwelling unit. While the current rule protects consumers from unnecessary disruption and expense caused by the removal of the wiring, staff believes that in an MDU environment the rule should be expanded to allow for a demarcation point which provides equal access for all future service providers.

In order to provide an equal balance between the rights of consumers and the needs of service providers to access and serve MDUs, staff recommends a cable demarcation point flexible enough to accommodate the different wiring configurations in existing MDUs. As previously noted, this approach was partly adopted in the telephone rule when the Commission revised its telephone inside wiring demarcation point for MDUs. For existing and future MDU cable wiring, staff recommends a demarcation point at the first readily

accessible location where the cable becomes solely dedicated to the individual dwelling unit or subscriber. In a non-loop-through configuration, each subscriber has a dedicated line extending from the security box or distribution tap that is accessible at the point where it becomes dedicated to the subscriber. In most cases, the point of demarcation would be at the security box or distribution tap. Depending on the size and layout of the building, this location may be on each floor, or a single point in the basement or the outside wall of the building.

Staff believes that a cable demarcation point which is located in a common area (i.e., at the distribution tap or security box), rather than at the individual dwelling unit, will minimize unnecessary disruption to the common areas of the building caused by the "stringing" of multiple wires that would otherwise be needed to reach the individual dwelling units. This approach should also encourage alternative multi-channel providers to offer service in MDUs by minimizing the expense and inconvenience of running new inside wiring.

D. Ownership and Disposition of Inside Cable Wiring -

With respect to the ownership and disposition of the inside wiring beyond the point of demarcation, the current rule governing cable wiring is not explicit on the issue of ownership. Where cable operators provide service in an MDU, we believe there is a rebuttable presumption that the wiring is owned by the incumbent operator including the wiring in the individual dwelling unit. Staff believes that in these

circumstances the incumbent operator should retain ownership of both the common wiring beyond the present point of demarcation and the wiring within the dwelling unit, until such time that the subscriber voluntarily disconnects its service in order to connect to an alternative service provider. At that point ownership of the wiring, including the wiring within the individual dwelling unit, should be transferred to the new service provider. As utility easements convey a right of access for utilities on private property, access to cable wiring in MDUs must similarly contain an easement-type right for service providers.

Staff believes that these proposals meet the goals sought by the Commission in the NPRM, including those concerning competitive access, property rights of the incumbent operator and the building owner. Additionally, the proposals will reduce customer confusion and provide for an easier transition between service providers without imposing further obligations upon the MDU customer.

E. Compensation -

In terms of compensating the incumbent cable operator, the price for the wiring should be based on the existing Home Wiring rule (i.e., based on the replacement cost of the wire, priced on a per-foot basis), unless the cable was installed after a certain date, in which case a recovery component for labor costs may be permissible. Staff believes that the mechanism for transfer of ownership should also mirror the existing cable home wiring rule.

F. Telephone Inside Wiring -

It is staff's belief that any eventual rule that is promulgated must consider the impact of the resulting change in responsibility that will occur if the RDP is placed at the minimum point of entry (MPOE) of a rented or leased facility. While staff concurs with the Commission's stated goal of increasing competition in the inside wire market, it should not come at the expense of a tenant that has no ownership interest in the building in which he lives. If, in the interest of competition, the RDP is permanently established for MDUs at the MPOE, the tenant should only be responsible for the wire that is physically in their unit. The balance of any inside wire must be transferred to the building/property owner. Therefore, the portion of inside wire that is beyond the RDP up to the tenant unit would be treated like any other asset used to delivery a service (i.e., electric or gas).

The Board has recently published a proposed rulemaking (PRN 1995-369) dealing with these issues. In its proposal, the Board seeks to establish basic safeguards to protect consumers against wire problems that may occur in riser cable and limit their liability in the event that facilities used to delivery telecommunications service become exhausted due to multiple providers utilizing the inside wire for secondary or ancillary services. Additionally, the rule effectively transfers ownership of the inside wire to the building/property owner, requires telecommunications providers to offer optional wire maintenance plans to tenants and building property owners that take ownership of wire that had previously belonged to the telephone company, establishes

building/property owner responsibility and requires that building owners permit reasonable access to the network interface device in order to effect the repair and installation of wire and facilities beyond the RDP.

While Staff believes that the proposed rules are required to permit effective competition and to protect the public interest, the proposed rule is being held in abeyance until such time as it becomes clear whether the issues that have been raised by the Commission in the NPRM will necessitate a revision. Therefore, Staff urges the Commission to consider the effects on consumers of these services.

CONNECTIONS

I. Signal Leakage

As the franchising authority charged with regulating the cable industry in New Jersey, the Board has extensive experience with respect to technical compliance issues. Based on past investigations of cable television complaints and signal leakage problems, it is staff's experience that the aggregate impact of signal leakage from subscriber inside wiring can be a source of harmful interference and a potential hazard to life and property. Staff believes that existing signal leakage rules should be applied uniformly to any service provider using the portions of the frequency spectrum covered under the rules. Signal leakage rules should apply to all service providers utilizing the aeronautical radio frequency (RF) spectrum in the distribution network, regardless of the type of network being

used (i.e., the type of wire used to provide the service) or service being provided. Current standards should be met and measured at the same points which they are now measured at under the signal leakage rules for cable operators.

Because of the legal and technical requirements placed on cable operators, staff believes that regardless of the ownership status of the cable wiring, it is essential that the service provider be guaranteed access to and retain certain control of all cable wiring during the time its service is being delivered. In instances where the service provider is unable to comply with technical or safety standards as a result of subscriber owned wiring, staff believes that service providers should have the right to either charge the subscriber for repairs, allow the subscriber to remedy the condition, or curtail service after affording the subscriber a reasonable time to cure the condition.

Where the homeowner has installed the inside wiring, and the wiring is of poor and inferior quality, the service provider should be allowed to require that the homeowner abandon the wiring and that new wiring be installed prior to connecting to the network. The service provider must show, however, that it is not practical to repair the existing wiring and that such wiring violates technical and/or safety standards when connected to the network.

II. Means Of Connection

Under the current rules, standardization of telephone jacks is designed to ensure network integrity and protect network facilities. The Commission's rules define the technical specifications for connecting jacks to the subscribers interface unit at the point of demarcation. In this respect, staff does not believe that additional regulatory oversight is required to ensure network integrity and reliability of telephone service providers.

With respect to the type of connection used by the cable television industry, as the commission noted in the NPRM, while there are no current rules governing the type of connector used by the industry, the "F-type connector" is the connector of choice for most cable operators. Cable operators almost exclusively use F-Type connectors for connecting coaxial cable to subscriber equipment. Essentially, the F-type connector has become the "de facto" standard for connecting coaxial cable to customer equipment. When properly installed, the F connector provides an effective means of securing the coaxial cable to customer premises equipment and also minimizes the potential for signal leakage. In this light, staff believes that standardization already exists in the cable industry and that no regulatory oversight is needed. Additionally, in a competitive environment, the new service provider's ability to connect to existing customer equipment will determine marketability and maintain standardization.

CUSTOMER ACCESS TO WIRING

I. Telephone Inside Wiring

The Commission's current telephone and cable rules provide a regulatory framework which is separate and distinct in terms of customer inside wiring. In the 1980's the Commission deregulated the installation and maintenance of telephone inside wiring in order to make the cost-causative customer pay for the installation and repairs of the wiring, and to also foster competition in the telephone installation market. The Commission contemplated that deregulation of inside wiring would create a highly competitive market for all telephone related services on the customer's side of the demarcation point.

Staff believes that the current telephone wiring rules provide a clear and explicit framework governing customer access to and use of traditional telephone inside wiring, (i.e., twisted pair). In this vein, staff agrees with the Commission's tentative conclusion that there is no need to change its rules giving consumers the right to access their traditional inside telephone wiring.

II. Cable Inside Wiring

With respect to the current rule governing cable inside wiring, the commission simply created a mechanism which allows cable subscribers to own the inside wiring upon voluntary termination of service for the purpose of connecting to an alternative service provider. As staff

noted earlier in its comments, the current rule does not specify pretermination ownership of existing cable wiring.

In terms of providing customer access to cable inside wiring, staff believes that before access issues can be resolved, the ownership status of existing inside wiring must first be determined. In cases where ownership has not been proven by either party, it may be possible to determine ownership, based on taxation laws which define whether inside wiring constitutes a fixture or an asset of the company.

Once ownership of existing wiring has been determined, the existing rules governing cable inside wiring can be used to resolve customer access issues for existing inside coaxial cable wiring. Regardless of who owns the wiring, under the current rules (both the Home Wiring rule and the Rate Orders) cable operators are given certain rights to access, and charge, for the maintenance of the inside wiring at the time their service is being provided, even where the homeowner owns the cable wiring. On the other hand, if the incumbent cable operator is determined to be the owner of the existing inside cable wiring, the current rule provides for conveying inside wiring ownership and access to the homeowner at the time of voluntary disconnection under certain circumstances.

With respect to the subscriber's ability to own and access the cable operator's inside wiring at the time service is being provided, staff does not believe that subscribers should be prevented from voluntarily acquiring the inside wiring. We believe the existing Home Wiring rule should be extended to allow subscribers to purchase cable operator

owned wiring before termination, provided the subscriber voluntarily acquires the wiring under the same cost mechanism currently in place. Staff is concerned, however, that transfer of ownership be voluntary on the part of the subscriber. This would prevent wholesale abandonment of ownership of the inside wiring by cable operators, who may see this transfer of ownership at the time their service is being provided as an opportunity to charge unregulated maintenance fees to subscribers. Transfer of ownership should be in accordance with the provision in the recent proceeding (FCC Docket 92-260) regarding subscriber notification issues.

SERVICE PROVIDER ACCESS TO PRIVATE PROPERTY

As the Commission noted in the NPRM, New Jersey and other states have already adopted a statutory framework governing access rights of cable providers to MDUs. Regulations adopted by the Commission should be based on, and consistent with, the model adopted by the states. Under New Jersey statutes, access agreements must provide reasonable access to the franchised cable operator and just compensation to the building owner. With respect to access by competitive service providers, this issue should be left to the states where statutes can be modified to provide for competitive access by all service providers.

CUSTOMER PREMISES EQUIPMENT (CPE)

On the issue of CPE, staff recommends that the Commission retain the rules governing requirements for

equipment connected to the public telephone network. The current rules require that the equipment be certified as meeting existing Part 68 requirements. Staff also recommends that the Commission similarly retain Part 15 requirements for cable-related CPE.

As the Board noted in previous proceedings regarding regulations ensuring compatibility between cable systems and consumer equipment, while staff believes that third party vendors should be allowed to provide CPE to cable subscribers to receive cable programming, we do not believe that it is practical to allow vendors to provide CPE used to secure a cable operator's signals. The differing technologies utilized in the provision of broadband and narrowband services lead us to this conclusion. If, however, a broadband service provider had access to a switched network, we believe that no restrictions in this area would be necessary.

Staff's overriding concern is theft of service, which becomes unlikely if the service provider controls what the consumer can obtain from a central location. If a similar technology is available to a broadband service operator (e.g., a switched network, addressable tap technology, etc.), restrictions on availability of equipment would not be necessary (except for certifying Part 15 and/or Part 68 compliance).

To meet the Commission's objectives in this area, customers should be permitted to connect any "type accepted" end terminal equipment to a broadband or narrowband service

provider's wiring, provided no security defeating technology is present, and that connection is made without compromising network and system integrity. Adoption of regulations which includes these terms would provide sufficient protection and flexibility to all parties concerned.

Any necessary incentive to provide "in-the-clear" signals will be provided by a competitive environment since an alternative provider that can offer service to a wider range of consumer equipment without compatibility problems will ultimately prevail, causing others to follow suit. However, as the Board has also noted in a previous proceeding, standards for digital transmission of video and audio, and associated interfaces to consumer equipment, should be adopted by the Commission initially. This should foster development of a competitive market where subscribers may select an alternate service provider without fear of equipment incompatibility or obsolescence.

Equipment which is offered by a broadband service provider, but is also widely available from other sources should be immediately deregulated, although local or state authorities should still be given the ability to require notice to customers from a service provider that this equipment is available from other sources.